IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 4 of 2007
In
COMPANY APPLICATION No. 463 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEMANI ORGANICS AND CHEMICALS PRIVATE LTD. - Petitioner(s)

Versus

. - Respondent(s)

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Appearance :
MR VIMAL M PATEL for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,
MS AMEE YAJNIK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/06/2007

ORAL JUDGMENT

Present Company Petition is filed by the petitioner HEMANI ORGANICS AND CHEMICALS PRIVATE LTD. (transferor company) for sanctioning of scheme of amalgamation of Hemani Intermediates Pvt. Ltd. (transferee company) under section 391 read with section 394 of the Companies Act, 1956. It is reported that the transferee company had approached the Bombay High Court for sanctioning of scheme of proposed scheme of amalgamation as the registered office of the transferee company was within the jurisdiction of the Bombay High Court and that by judgment and order dated 16-3-2007, the Bombay High Court has sanctioned the proposed scheme of amalgamation.

2. It is submitted that the petitioner and the transferee company belong to the same group of which the transferee company is the flagship company and the business facilities of both the companies are

complimentary to each other and the proposed scheme of amalgamation will offer synergistic benefits to both the companies. The petition gives details of advantages that would flow by virtue of amalgamation of both the companies.

3. The proposed scheme was approved unanimously by the equity shareholders, secured and unsecured creditors of the transferor company through the consent letters which were put on record along with the company petition No.463 of 2006 and MCA No.143 of 2006. Hence, meeting of the equity shareholders and secured creditors and unsecured creditors were dispensed with vide order dated 25-8-2006 and 21-9-2006 passed by this Court. The notice of the order dated 25-8-2006 and 21-9-2006 dispensing with the meetings are annexed to the petition as Annexure J.

4. After the petition was admitted, the same was duly advertised in the newspapers i.e. “Indian Express” (English daily), Vadodara edition and “Gujarat Mitra” (Gujarati daily), Surat edition dated 3-2-2007 and affidavit to that

effect has been filed dated 26-2-2007. Publication in the government Gazette was dispensed with as per the order passed by this Court. No one has come forward with any objection to the said petition after the publication. Notice of the petition of the petitioner, - transferor company was served upon the Official Liquidator attached to this Court. Vide report dated 12-3-2007 filed by the Official Liquidator, it is observed that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of the members or public. Notice of the petition has been served upon the Central Government and Ms Amee Yajnik, ld. Central Government Standing Counsel has appeared for the Central Government. An affidavit-in-reply is filed on behalf of the Central Government, affirmed by one Shri P.L. Malik, Asst. Registrar of the Companies Gujarat dated 9-4-07 along with the letter of the Regional Director (WR), Mumbai. It is submitted that as per the letter dated 2-3-07, it has been decided by the Central Government not to oppose the company petition. However, it is observed from the company petition that the appointed date is treated to be 1-4-2005, whereas the company petition has been filed

very recently and therefore, the petitioner may be directed to file the affidavit clarifying whether any sale/ service is provided between the transferor and transferee company or vice versa and if so, whether sales tax/ Service Tax/ Duty Draw back is charged from the parties receiving sales/service and also clarifying as to how the so collected tax/duties from the appointed date till the effective date will be treated by the petitioners.

5. Heard, Shri Vimal Patel, learned advocate appearing on behalf of the petitioner company.

6. The submissions have been made by him explaining the issues raised by the office of the Regional Director. An additional affidavit is also filed on behalf of the petitioner company dealing with the observations made by the Regional Director. The observations made by the Regional Director are dealt with in para 4,5 and 7 of the additional affidavit dated 30-4-07. It is submitted in the reply that neither the petitioner company or M/s HEMANI ORGANICS AND CHEMICALS PRIVATE LTD. are functioning as a service industry and therefore, the question of service tax does

not arise. In para 7, it is undertaken on behalf of the petitioner company that any such sales tax, excise duty charged by the petitioner to transferee company and vice versa in respect of any inter se transactions would not be netted off and claimed in the combined balance sheet prepared by the transferee company after the effective date and it would be ensured any such liability on account of sales tax, excise duty or any Government levy is deposited with the Government or respective department by the company. It is also undertaken on behalf of the petitioner company that any such tax liability arising after appointed date till effective date, the petitioner company undertakes to deposit with the Government or respective department of the Government. It is further submitted on behalf of the petitioner company that similar objections were raised before the Bombay High Court in a proceedings initiated by the transferee company and a similar affidavit and undertaking was filed and after considering the same, the Bombay High Court has sanctioned the proposed scheme of amalgamation. Having gone through the petition and submissions and the additional affidavit filed on behalf of the petitioner

company dated 30-4-07, I am satisfied that the observation made by the Regional Director do not survive and the amalgamation would be in the interest of the company, its members and creditors. Under the circumstances, prayer in terms of para 34 (A) is hereby granted and proposed scheme of amalgamation is hereby sanctioned.

The petition is disposed of accordingly. So far as cost to be paid to the learned Central Government Standing Counsel, the same is quantified at Rs. 3500/- per petition and the same may be paid directly to Ms Amee Yajnik, learned Central Government Standing Counsel.

(M.R. Shah, J.)

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